

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY ROBERT MIZNER,

No. CV 12-0288 CRB

Petitioner,

CERTIFICATE OF APPEALABILITY

v.

RANDY GROUNDS,

Respondent.

Now before the Court is Anthony Robert Mizner's request for an issuance of a certificate of appealability ("COA"). A judge shall grant a COA "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Indeed, "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).

Here, the Court concludes that reasonable jurists could debate one of the two issues for which Mizner seeks a COA. A COA is granted as to the following issue:

1 Was Mizner deprived of the effective assistance of counsel under the Sixth and Fourteenth
2 Amendments when his trial attorney failed to request the sentencing court exercise its
3 discretion to sentence his possession of methamphetamine as a misdemeanor, rather than as a
4 felony?

5 The Court GRANTS a certificate of appealability as to this claim.

6 **IT IS SO ORDERED.**

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9 Dated: October 31, 2013



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE